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ABSTRACT

This chapter of "Principles of School Business Management" reviews several concerns that must be addressed by school business administrators in districts facing declining enrollments and the need for reductions in force. The chapter first looks at the business administrator's significant role in planning for retrenchment. The chapter then discusses the difficulties posed for districts by financial exigency. Court litigation affecting job security clauses in negotiated agreements, district claims of fiscal insolvency, and reductions in force resulting from enrollment decline are considered next. The chapter then analyzes the state-granted authority of the local board of education to engage in reductions in force. Several alternatives to reductions in force are noted. The order of dismissal of employees, the impact on employment of district consolidation or desegregation, the acceptability of "bumping" employees with less seniority out of positions, the assignment of formerly full-time employees to part-time positions, the clarification of the status of "qualified" and "certified" personnel, and problems associated with the absence of written policies for reduction are also considered. References and court cases are cited in 74 notes. Appendices offer sample contract clauses and board policies for reduction in force. (PGD)

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Reduction in Force

R. Craig Wood

The Need For Planning

School business administrators will face problems due to declining enrollments throughout the next decade. The problems will be compounded by increasing reluctance of the public to continue funding education at current levels. Despite a decline in the number of students, the aggregate costs for education have not declined. While the aspiring school business administrator will find that much has been written on costs and the economics of scale related to the growth of public education, much less is available that describes planning activities for fiscal retrenchment.

The role functions of the school business administrator may be illustrated by Figure 20:1:

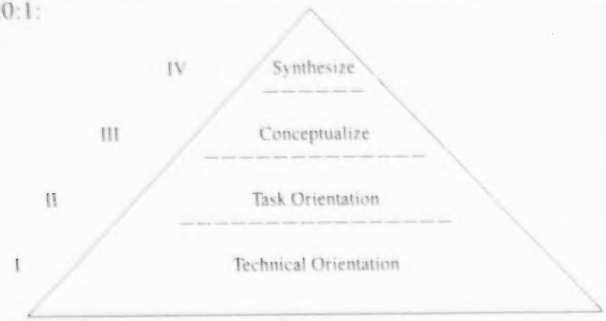

Figure 20:1 School Business Administrator Role Functions

Figure 20:1 outlines the necessary skills for the practitioner facing a complex and continuing problem such as declining enrollment. In dealing with declining enrollment, the school business administrator must have a strong academic knowledge of public school law and finance. With this technical basis and knowledge, the school business administrator is able to progress to level two in developing the task-oriented skills to solve the problems of declining enrollment for a local school district. While identifying and clarifying the task the school business administrator is also conceptualizing various alternatives. The last step, that of synthesis, is the most difficult. The synthesis level involves blending technical knowledge, bringing that knowledge to the task and conceptualizing the fiscal and legal options that lead to a solution of the problems. The synthesis stage brings these components together as practical solutions for a board of education and superintendent to consider.

The role of the school business administrator is that of a technician, resource person and decision maker. For example, as a technician the school business administrator has calculated the effects of declining enrollment on state aid and the potential compensating options such as increasing local property taxes. As a resource person, the school business administrator may serve as a guide to the superintendent and board in developing procedures for reducing staff. As an analyst, the school business administrator presents alternatives and recommendations for the superintendent and the board to consider.

The school business administrator exerts tremendous influence on the decision-making process by deciding what plans are presented as well as recommending policy for consideration. Decision-making responsibility is exercised also when deciding what not to recommend to the school board. While there is no doubt that the board of education has the final decision-making authority, the impact of those who identify options and make recommendations as a part of the decision-making process is significant.

Financial Exigencies[1]

Financial exigencies are an ever-increasing reality for many public school districts. As the cost of education has risen dramatically, so has the decline of pupils, forcing the necessity of the dismissal of teaching staff. With little, if any, flexibility and fewer students, school districts have been forced to engage in reduction-in-force (RIF). RIF whether it is referred to as layoff, leave, furlough, non-renewal or termination, is the suspension of teachers in a manner unrelated to performance. Within guidelines, school boards possess authority over the hiring and firing of employees. The school board is a governmental agency clothed in authority delegated by the state legislature. Education is considered to be a state function as reflected in the Tenth Amendment of the United States Constitution. The various state legislatures have generally delegated much of the governance of schools to local school boards, and in this manner, provided for education by discharging a state function.

It is important to note that what a state legislature may create it may also destroy. A school board functions within the prescribed legislative and judicial limits of its authority. The degree of flexibility which school boards may exercise is dependent on the role that each state legislature has delegated to the local education agencies under its jurisdiction. School boards possess no inherent powers and thus must operate within state legislated parameters. Accordingly, school districts often find themselves in the difficult position of discharging a state-determined function while they seek to provide quality educational programs under severe budgetary constraints.

An additional factor affecting a district's ability to achieve its goals and meet obligations is the presence and relative strength of the unions representing classroom teachers. Many of the concerns of the teachers' associations are in conflict with those of the school board. Critics argue that teachers' associations historically have been concerned with protecting as many positions as possible, while at the same time maximizing the economic reward for all those protected. Never is this dichotomy more evident than in situations of declining enrollments when the union seeks two mutually exclusive objectives such as step and pay raises for everyone

and job security for all who are covered by the contract. From a management point of view, such a position is difficult to comprehend when faced with the reality of budgetary constraints and priorities.

The financial exigencies within a school district are generally not a major concern of the teachers' association. The observer of collective bargaining in the public sector should note that at the time of financial insolvency, the teachers' union should be vitally concerned. In the past, concern for financial ability of school districts in the long run was outweighed by a preoccupation with short-term objec- face of enrollment declines, teachers' associations have typically recommended raising taxes, short-term borrowing, cutting certain non-teaching areas, e.g., maintenance and custodial services, before reducing the numbers covered by the contract. Only recently have the various unions begun to examine such issues within the context of long-range planning models.

Job Security

The strongest means by which a teachers' association may insure security in the face of financial exigencies is through a collective bargaining agreement that contains a job security clause. A job security clause may be worded in such a manner as to severely restrict, if not eliminate, the board of education's decision-making options in this area. Job security clauses may present acute problems for a school district facing declining enrollments. The problems may be further compounded as states generally do not permit deficit spending by school districts.

Two court cases from the public sector in New York serve to typify judicial logic regarding job security clauses. In *Burke v. Bowen*[3] the New York State Court of Appeals examined a job security clause that stated:

> All tours shall consist of a minimum of six (6) Fire Fighters. . . . It is agreed by and between the parties that the best interest of public safety as regards full protection with the minimum complement of thirty-four (34) active Fire Fighters, shall be acceptable for the term of this agreement . . . . Notwithstanding any provision herein, it is agreed that upon a re-evaluation as to minimum complement, that in no event shall the presently agreed upon minimum be readjusted downward. The specific intent of this provision is to issue public safety standards as well as minimum job protection for the Fire Fighters.[3]

The court ruled that job security clauses, although not mandatory, were permissible if granted over a limited period of time. Nevertheless, the court stated that since the city faced extreme financial pressure, it did not have to reinstate the workers. The court did state, however, that the workers might have cause to litigate damages due to breach of contract. An examination of *Burke* reveals the obvious ramifications and legal issues involved in the litigation of RIF policies.

In a similar case from New York, *Board of Education v. Yonkers Federation of Teachers* the contract clause in question read:

> During the life of this contract no person in this bargaining unit shall be terminated due to budgetary reasons or abolition of programs but only for unsatisfactory job performance as provided for under the Tenure law.[4]

In examining the issue, the New York Court of Appeals considered the following factors:

> (The clauses) were of relatively brief duration. . . . Nor were they clauses negotiated in a time of financial emergency between parties of one equal bargaining power. Most important, the job security clause in this instance is explicit in its protection of the teachers from abolition of their positions due to budgetary exigencies. . . . (Citations omitted).[5]

Although the court acknowledged that not all job security clauses were valid or enforceable depending upon the circumstances, the court stated:

> A job security provision ensures that, at least for the duration of the agreement, the employee need not fear being put out of a job. Such absence of fear may be critical to the maintenance and efficiency of public employment, just as the fear of inability to meet its debts may destroy the credit of the muncipality. A job security clause is useless if the public employer is free to disregard it when it is needed.[6]

In *Burke* and *Yonkers* the courts ruled that, depending on the circumstances, a board of education may have to honor the collective bargaining agreement in terms of job security. Although a state may outline by law the RIF procedure, the teachers' association may still be allowed to bargain the definition of seniority by way of defining and expanding the seniority rights of teachers.[7] In the state of Washington, a court has ruled that RIF is not a mandatory item for discussion at the bargaining table, as a contract settlement was not a prerequisite for dismissal of employees based on budgetary consideration.[8]

Generally, job security is still a permissible subject in the bargaining process. Under certain factual situations, school districts in some states may be unable to renege on a contract based on the *Burke* and *Yonkers* decisions. Obviously, school districts outside New York are not bound by such decisions, although they may face similar interpretations.

Job security is generally near to the heart of most teacher associations. If job security for all cannot be achieved, the union normally aspires to a straight "last hired—first fired" clause, hence preserving jobs for those with greatest seniority. It is common practice in many communities for the teachers' association to oppose RIF action by engaging in some combination of the following activities:

- Monitoring of all public meetings in order to search for any evidence of preconceived ideas by the board of education.
- Monitoring of all budgetary documents which might reflect a board of education's unwillingness to seek additional funding through application, grants, title moneys, tax refunds etc.
- Presenting and publicizing various alternatives concerning the dismissal of teachers.
- Publicizing RIF as a ploy to close more neighborhood schools.
- Gathering all the financial data relevant to administrative positions for purpose of comparative analysis.
- Monitoring the collective bargaining contract for possible interpretive or factual violations.[9]

Most states have clearly delegated the authority for teacher termination to local boards of education. Although there are many causes which may result in RIFs, the majority fall in three areas: financial, enrollment and programmatic reasons. Generally, most state tenure laws are not intended to guarantee continuous lifetime employment.[10]

Financial Insolvency

Court cases involving RIF, based on financial insolvency by school districts generally center on attempts to determine if such a situation does, in fact, exist. Generally, the focus of such cases is not on the board's authority, but rather the financial facts from which the board reached its conclusions.[11] The courts in most of these cases, find in favor of the teachers' associations. Challenges to RIFs based on breach of contract may be successful under certain factual and statutory conditions, regardless of data supportive to a RIF action.[12] In the event that an unanticipated action such as a court order, prevents contract fulfillment, RIF might be successful without a successful breach of contract suit.[13]

It is important to recognize that each state may have a different interpretation of what constitutes a financially insolvent or potentially insolvent situation. For example, the term "insufficient funds" is used in the Missouri statute. In *Frimel v. Humphrey*[14] the court ruled that RIF was permissible in view of the "erosion of expected sources of revenue."[15] In California the statute permits RIF on the basis of "lack of funds." However, the court did not equate bankruptcy with a "lack of funds" as the district in question had a cash reserve.[16]

When financial exigency is claimed by the school board, the board must be able to refute any bad faith allegations by being prepared to substantiate the actions with empirical data. Several cases typify different factual situations and, hence, different outcomes. In *Unified School District v. Epperson*,[17] two teachers were dismissed due to alleged "budgetary cuts, necessitated by a decrease in state aid."[18] On appeal, the court determined that the teachers' due process had been violated. Testimony indicated that their selection for termination might have been associated with their union activity. In a Washington state case, a dismissed teacher successfully challenged the dismissal in court as the board failed to show sufficient documentation to eliminate the position.[19]

On the other hand, the courts have reached different conclusions in those cases where the financial conditions were indeed bona fide and warranted major budgetary adjustments. In Connecticut, the court upheld a teacher termination when the Board of Selectmen failed to pass the budget of the board of education.[20] In Pennsylvania, a charge brought by a dismissed teacher alleging the board had insufficient evidence to warrant RIF was rejected by the Pennsylvania Commonwealth Court.[21]

These cases serve to underscore the need for administrators to be prepared with empirical evidence of a clear, concise, factual and financial nature that supports the board of education's position in the event of adjudication. The preponderance of court decisions reflects that boards which act in good faith, and whose decisions are based on substantial empirical evidence, experienced minimal judicial interference.

Enrollment Declines

RIF, based on declines in enrollment, share similarities with those carried out because of financial exigencies. An important distinction, however, is that a given district may have an increase in overall enrollment but experience a decline within a given academic area or program. For example, an enrollment decline may result from a junior high to middle school reorganization or a shift from an open space to a traditional style of instruction. Again, judicial examination seems to center on the factual circumstances and the quality of empirical evidence presented. In *Phillippi v. School District*[22] the court considered a decline of 661 students over six years as "substantial" under Pennsylvania law.

A case from 1929 illustrates a specific declining academic area juxtaposed with an overall pupil increase. In that case, a teacher of a millinery class was laid off when changing women's fashion resulted in a reduced demand for the class.[23] The court agreed that the layoff due to specific enrollment decline was proper.

In a similar case, a Pennsylvania court supported a board of education's decision to abolish the kindergarten program and its attendant jobs. At the time, kindergarten was not required under state statute. The court said:

> Many new fields of experimentation have been launched by our school authorities. Some have been found unsuccessful in accomplishing their purpose, and if an employee's position is upheld, no school board would risk the establishment of any new department, which in the event of failure must be continued or its idle teachers paid.[24]

However, at least one state court has ruled that simply because the position was abolished, the employee had certain rights. In *Dugas v. Ascension Parish School Board*[25] the court stated that the board had to place the teacher in a position of equal standing and, if possible, pay the teacher's salary.

Authority of the Board of Education

The authority of a board of education to engage in RIF generally rests in the implied powers given to boards of education by the state legislature. As discussed previously, boards of education are creations of the state legislature which, generally, have been granted broad and sweeping powers varying from state to state. These powers derive from specific legislative enactments or interpretations thereof, and in forty-nine states,[26] by rules and regulations promulgated by the state board of education.[27]

Understandably, a local board of education must have reasonable flexibility in dealing with declining enrollments, as well as a myriad of other problems. In doing so the board may not, however, violate any state procedures, regulations, statutes, federal laws, or function in a manner which is in conflict with the state's interest.[28] In most states, the local board of education's authority to engage in a RIF is sanctioned by state statute.[29] In *Weisman v. Board*[30] the Colorado Supreme Court spoke to the issue of school board authority as follows:

> The power of the board of education to dismiss and discipline teachers is not merely punitive in nature and is not intended to permit the exercise of personal moral judgments by board members; rather it exists and finds its justifi-

cation in the state's legitimate interest in protecting the school community from harm and its exercise can only be justified upon showing that such harm has occurred or is likely to occur.[31]

School boards may, in some instances, engage in RIF in the absence of clearly defined statutory procedures and reasons. Two Iowa cases illustrate judicial interpretation of certain statutory phrases. In *Hartman*[32] the Iowa court ruled that "any good cause" did not include RIF layoffs due to declining enrollments, but rather only to personal faults of teachers. Later in *Briggs v. Board of Directors*,[33] the court upheld RIF deeming financial considerations to constitute "just cause." In a case taken from higher education, *Johnson v. Board of Regents*,[34] the federal district court upheld the termination of tenured faculty members under the statutory language of "just cause." The court stated that this was permissible as long as the Fourteenth Amendment and other individual rights were not violated. The courts elaborated by saying that if the termination were not due to impermissible reasons (such as race), and was not arbitrary, capricious or unreasonable, it was legally defensible.[35]

School districts in the throes of declining enrollment generally wish to explore alternatives to RIF. If a steady pupil decline is inevitable, however, temporary solutions will not solve the problems of declining enrollment. Alternatives described in popular educational literature include:

Adult Education. The public school district broadens its appeal and programs to reach a larger clientele and creates new jobs in the process . Dependent on several conditions, this option, however, may not address long-range problems. Opponents of this concept question the savings which accrue to the taxpayer and whether all various kinds of teachers are suited to teach adult education courses. It should not be suggested these plans are doomed, but merely that certain logistical and practical problems must be resolved before implementation.

Annual Pay Raises. Proponents suggest either doing away with, or severely curtailing, step raises. Depending on the bargaining climate, this may not be as practical as some would suggest. Case law clearly suggests that step raises pertaining to previously signed contracts must be honored. Whether step raises should or must be calculated in upcoming contracts is a lengthy subject outside the confines of this chapter. Arbitration panels have ruled in different manners in various states on this question.

Attrition. The normal rate of leaves, resignations and retirements should be accounted for and used whenever possible. This practice is common among school districts throughout the nation.

Busing. Much has been written about busing of pupils for a variety of reasons. Although not common, some districts have irregular pupil population trends, e.g., enrollments are increasing in some schools and declining in others. In areas where this occurs, and if legally and logistically possible, certain exchanges of students and teachers should be explored.

Closing Facilities. One of the largest financial savings can be realized by reducing the number of facilities in use. This option is explored in another chapter.

Early Retirement. In states where it is legally permissible for boards to participate in such plans, and under certain circumstances, some plans may produce limited savings. Generally, early retirement programs do not lead to the kind of cost savings claimed by the popular press and the teachers' unions.[36]

Helping Teachers Find New Jobs. This plan is used by many large urban school districts. When unemployment compensation benefits are accounted for, these plans may become cost effective.

Increasing Class Size/Increasing Work Loads. Many articles in the popular literature suggest that, if the class sizes/work loads are increased, many financial problems will be resolved. While research is unclear as to the optimum size of classes for learning, legal, political and practical (facility) limitations restrict the extent sizes may be increased. It is not effective to increase class size if such a move results in disciplinary problems and increased vandalism.

Job Sharing. Two teachers filling one position on a prorated basis of salary and benefits is growing in popularity in some communities. There is, however, little research that examines how pupils learn under these arrangements.

Leaves. Some school districts in the last several years have developed open and liberal non-paid leave policies. The rationale for such policies is that it encourages teachers to seek alternate work for one or more years. Some districts report that the majority of teachers who select leaves find economic reward elsewhere and do not return. The practice consequently encourages attrition. As the need arises, some districts hire less experienced and, therefore, less costly teachers on a temporary contract. With careful design, the retiring teacher by virtue of his or her absence, has not progressed as quickly on the salary matrix because the step increases have not been awarded.

Multi-Age Classroom. Through this technique, smaller classes are combined using modified instructional techniques.

Pre-Primary. As with the discussion of adult education, the school district expands its clientele and reassigns its teaching personnel. With more pre-school children coming from homes where both parents work, the need for such programs in many communities will continue to grow. From an educational point of view, there is clear evidence that such programs are beneficial and cost effective. Such plans may not, however, solve the basic financial problems of the school district.

Reducing the Number of Part-Time Personnel. Many school districts reduce part-time positions before full-time positions. Although this seems to be wise, it should never be assumed that part-time employees are without legal and contractual guarantees. The fact that part-time employees may not have been mentioned in the collective bargaining agreement does not mean necessarily they are not covered by such agreements in many states.

Short-Term Contracts. While in many districts short-term contracts are used wisely, they may be viewed as a violation of the procedural safeguards and the intent of many state teacher tenure acts. Those districts that have attempted such across-the-board action generally have not experienced a great deal of success.

Once RIF has been determined to be a necessity, the school board must deal with the many questions regarding the actual positions to be eliminated. Great care must be taken that the board does not act in an arbitrary, capricious or unreasonable manner in making its decisions. Illustration of this principle is found in *Collins v. Wolson*[9] in which the court stated that the school board may:

> Employ any device or standard to implement the reduction, such as arbitrarily drawing lots or otherwise leaving the decision to chance, so long as the actual reason for the particular separation was not retribution against the instructor's constitutionally protected conduct.[10]

Minnesota courts in three cases[38] have allowed administrators and school boards to have flexibility in deciding what positions to eliminate. The school officials may decide what positions to eliminate within categories as well as determine the nature of any new positions under alternative arrangements.

Order of Dismissal

Decisions concerning which employees to dismiss will depend on statutory guidelines, collective bargaining agreements and state court decisions. Minnesota, New York and California,[40] for example, require by statute that the non-tenured teacher be laid off first if the tenured teacher is certified and qualified to take over the non-tenured teacher's position. Unless state statute requires a given procedure or an applicable court case sets forth case precedent, it is to the board's advantage not to base RIF on a standard "last hired-first fired" procedure. A court in Nebraska[41] has upheld the right of a school board to use extra-curricular activities as a basis for dismissing teachers when all other factual circumstances are similar. In Indiana the courts[42] have clearly ruled that a tenured teacher may not be dismissed over a non-tenured teacher if both are certified for the same position.

Consolidation/Desegregation

RIF often occurs when school districts are consolidated. Consolidation of school districts normally results in the elimination of superfluous positions. In *Hensley v. State Board of Education*[43] the Supreme Court of New Mexico, examining the question of whether a teacher loses seniority by virtue of the district's merging with another district, the court said that a teacher loses no rights when two districts merge to create a new district since the consolidated district is legally a continuation of the previously non-consolidated district. On the other hand, in *Beckett v. Roderick*,[44] the Maine Supreme Court ruled that a newly consolidated district was not obligated to hire several recently dismissed teachers. A crucial basis for the court's decision was that the enabling legislation for consolidation made no mention of personnel transfers. The court saw no inherent obligation on the part of the local school board to hire the previously dismissed teachers. It was, therefore, a matter to be left to the local school board's judgment.

When students are transferred across district lines for court-ordered desegregation purposes, one district may be instigating RIF procedures while another district may be hiring additional teachers. The impact of such court orders is unclear as to the obligation of the receiving district. In the absence of a definitive ruling by an appropriate court, districts generally are not bound by legal obligation to hire the neighboring school district's teachers.

Historically, during desegregation a great deal of consolidation has occurred by the merging of racially identifiable schools and school districts. In some instances, there has been evidence to suggest that minority administrators and teachers were dismissed as a result of consolidation. When RIFs involve minority dismissals, the courts have generally looked to the "standard" found in *Singleton v. Jackson*,[45]

Singleton stated that any dismissal or demotion of an employee must be on the basis of:

> . . . objective and reasonable non-discriminatory standards from all the staff of the school district. . . . Prior to such reduction the school board will develop . . . nominal objective criteria . . . in dismissal or demotion. . . . Demotion as used above includes a re-assignment 1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, 2) which requires a lesser degree of skill than did the assignment he held previously, 3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period.[46]

Since the *Singleton* "standard" was first set forth, the interpretation of its applicability has been narrowed considerably. In the 1975, case of *Pickens v. Okolona*[47] the court found the *Singleton* "standard" not "relevant" to the overall reduction of the number of teachers.[48] In *Lee v. Chambers*,[49] the Fifth Circuit Court of Appeals ruled that *Singleton* was not applicable since the RIF was due to a loss of Title I funds and not desegregation. In *Lee* the court was more concerned with the rationale rather than the impact, in a clear departure from *Singleton*. In *Harkless v. Sweeny Independent District*, [50] the *Singleton* "standard" was not applied as the evidence reflected that desegregation activities were not the result of a court order and had been implemented before *Singleton*. In *Barnes v. Jones County School District*,[51] the Fifth Circuit Court remanded the case to the federal district court to examine if the dismissal of teachers was racially motivated. However, in *Barnes* the Fifth Circuit Court stated that *Singleton* was not applicable because, although the number of black teachers had been reduced, there was no overall RIF. The Fifth Circuit Court interpreting *Singleton* in *Wright v. Houston Independent School District*[52] stated that it must be clearly shown that desegregation was the primary cause of the RIF. In *Peques v. Morehead Parish School Board*, [53] the Fifth Circuit Court ruled that a "mere lapse of time" is a sufficient rationale for dismissing a claim under the *Singleton* "standard." Although *Singleton* has been narrowly interpreted by the courts, its basic thrust remains valid. Inasmuch as racial discrimination creates a "suspect class," greater judicial scrutiny will be present in adjudicated matters involving RIF and its impact on minority employees. Once again, the necessity of having empirical data as reflected in objective teacher evaluations and sound school board policies is illustrated.

Bumping

As a general rule, state courts have upheld the policy of dismissing non-tenured teachers before tenured teachers in a RIF when all the factual circumstances are the same.[54] When a tenured teacher is released and he or she is certified in other areas currently held by a non-tenured teacher, the tenured teacher must be restored and the non-tenured teacher released. Note that this discussion assumes all things are generally equal with the absence of a statute or contract reflecting anything different and where the factual circumstances are without challenge.[55] In *Swisher v. Darden*,[56] the New Mexico Supreme Court ruled that the school board had to prove in its dismissal procedure that there were no other vacancies which the dismissed teacher was legally qualified to teach. This standard was narrowed in *Fort Summer*

v. *Parsons*[57] and *Penasco v. Lucey*[58] in which the New Mexico courts stated that *Swisher* was valid but only if the curriculum were not adversely affected by the procedure in question.

In summary, the vast majority of courts have upheld the concept of the tenured teacher "bumping" the non-tenured teacher. These decisions reflect the logic and intent of the various state tenure laws. On the other hand, there are a significant number of exceptions which either do not hold to this view or severely restrict such an interpretation. State court decisions in Connecticut,[59] Pennsylvania[60] and Maine[61] may restrict across-the-board bumping even within certified categories.

When tenured teachers are dismissed, boards must often determine the position to be eliminated. Two cases serve to illustrate widely different views. In *Williams v. Board of Education of Lamar*,[62] the Alabama Supreme Court stated that a board of education may dismiss any tenured teacher and that seniority is not a criteria for RIF of tenured teachers. The Pennsylvania Supreme Court, on the other hand, in *Welsko v. Foster Township School District*[63] stated that seniority must be a criteria for selection of those being dismissed. Courts in New York,[64] California[65] and Illinois[66] have also reached varying conclusions.

Often questions are raised about seniority rights of non-tenured teachers. One view holds that all employees acquire seniority regardless of tenure. The opposing view embraces the concept that non-tenured teachers have, by virtue of their status, little, if any, rights or privileges that normally accrue to tenured teachers. The seniority question is one of determining if considerations extend to and among non-tenured teachers. A New York court[67] has ruled that non-tenured teachers have seniority rights among non-tenured teachers. The opposite view was accepted by the Washington Supreme Court[68] where the court ruled that seniority rights do not, necessarily, extend to non-tenured teachers.

Full-Time to Part-Time

Often boards of education, due to financial conditions, wish to reduce certain positions to part-time positions. Some states require a set procedure for reducing full-time into part-time positions. In an Illinois case, *Caviness v. Board of Education*[69] the court ruled that the state statute concerning RIF was applicable where an employee was being reduced to a part-time position from a full-time position. Although relatively few statutes and court cases[70] offer specific guidance in this area, boards have found that great care should be exercised in this aspect of RIF.

Qualified versus Certified

Boards of education are often placed in an awkward position regarding conflicts in the status of "qualified" and "certified" personnel. Without a negotiated agreement or statute the terms are often interchanged to represent the same concept. Generally, certified is defined as "legally qualified." However, the Illinois Supreme Court[71] has ruled that "legally qualified" means more than the term "certified." If a school board can make an argument that "qualified" reflects years of successful experience in teaching within a given area, or possessing certain teach-

ing skills unique to the assignment and so on, then the board may have greater flexibility.[72]

Absence of Policy

The failure of a board of education to have a RIF policy or agreement, in the absence of a state statute, is not entirely negative. Constitutionally protected freedoms only protect individuals from Constitutional infringements. They do not themselves require a policy to be in place before dismissal. Obviously, however, a board of education must comply with all applicable state statutes. It also should be noted that in the absence of a written policy, a court may interpret a course of conduct to constitute a policy which, in turn, affect the working conditions of all employees[73] under certain state statutes.

Conclusions

A review of the litigation surrounding RIF claims is revealing. First, the widely accepted practice of "last hired-first fired" as practiced by countless school districts need not be a legal necessity. Second, in the absence of any infringement on the constitutionaly protected rights of citizens, the federal courts have been reluctant to interfere with the discharge of teachers by the local school board.[74]

Third, the courts are heavily persuaded by empirical data supporting demographic and financial claims by boards of education. With this empirical data, challenges based on constitutional infringements are weakened considerably in the course of litigation.

As generalization, where boards of education have operated within the state procedures and followed due process guidelines, the state courts have not substituted their judgment for that of the local school board. The evidence clearly indicates that although RIF is a difficult task and subject to litigation, local school boards in the face of financial exigencies may reduce their teaching staff through a variety of methods.

The school business administrator should keep the following in mind when assisting a local board of education with RIF planning:

- Appropriate state statute(s) should be followed in all procedures.
- Adequate legal counsel familiar with public school law should be secured at an early point.
- All financial and demographic projections for RIF decisions would be as accurate as possible to withstand any potential challenge.
- Great care should be exercised not to violate any constitutionally protected rights or affirmative action guidelines throughout the decision-making process.
- The school business administrator must stay abreast of all recent developments concerning RIFs to protect the board of education.

There are several excellent RIF models that a school business administrator may wish to consider. Policies will vary in each state dependent on the appropriate statutes and court cases. Thus, the policies contained within this chapter should

never be adopted without careful analysis by school business administrator and legal counsel. Each board of education will have different needs that require policy adjustments within the appropriate legal context. Selected samples are contained at the end of this chapter.

Notes

1. Portions of this discussion have been adapted from R. C. Wood, "Financial Exigencies and the Dismissal of Public School Teachers: A Legal Perspective," *Government Union Review*, III (Fall, 1982), 49-66.

2. 353 N.E. 2d 567 (N.Y., 1976).

3. Id. at 568.

4. *Board of Educ. of Yonkers City School Dist. v. Yonkers Fed. of Teachers*, 386 N.Y. S. 2d 657 (N.Y. App. 1976).

5. Id. at 660.

6. Id.

7. *Bd. of Educ. v. Lakeland Fed'n of Teachers*, 381 N.Y. S. 2d 515 (N.Y., 1976).

8. *Spokane Educ. Ass'n v. Barnes*, 517 P. 2d 1362 (Washington, 1974).

9. Adapted from S. B. Neill and J. Curtis, *Staff Dismissal: Problems and Solutions* (Arlington, VA: American Ass'n of School Administrators) 80.

10. See e.g., *State ex rel. Bing v. Bd. of Educ.*, 7 N.W. 2d 544 (Minn. 1942); *Foesch v. Indep. School Dist. No. 646*, 223 N.W. 2d 371 (Minn., 1974); and *Milne v. School Comm. of Manchester*, 410 N.E. 2d 1216 (Mass., 1980).

11. See e.g., *Bing*, 7 N.W. at 556.

12. See e.g., *Bruinsma v. Wyoming Public Schools*, 197 N.W. 2d 95 (Mich., 1972), *Clune v. School Dist.*, 166 N.W. 11 (Wis., 1918), *Hall v. School Dist.* 24 Mo. App. 213 (1887), *School Town of Milford v. Zeigler*, 27 N.E. 303 (Ind., 1890).

13. See e.g., *Kuhl v. School Dist.*, 51 N.W. 2d 746 (Neb., 1952); *Ashby v. School Township*, 98 N.W. 2d 848 (Iowa, 1959); *Neilson v. Lincoln Parish School Bd.*, 125 So. 458 (La., 1929); *Morey v. Power*, 78 Tenn. 219, (1882).

14. 555 S.W. 2d 350, (Mo., 1977).

15. Id. at 352.

16. *California School Employees Ass'n v. Pasadena Unified School Dist.*, 139 Cal. Rep. 633 (1977).

17. *Unified School Dist. No. 480 v. Epperson*, 583 F. 2d 1118 (10th Circuit, 1978).

18. Id.

19. *Bradfute v. Renton School Dist. No. 403*, 557 P. 2d 147 (Wash., 1978). See also *Cigarski v. Lake Lehman School Dist.*, 407 A. 2d 460 (Pa., 1979).

20. *Baston v. Ricci*, 391, A. 2d 161 (Ct., 1978).

21. *Penzenstadler v. Avonworth School Dist.*, 403 A. 2d 621 (Pa., 1979). See also *Freiberg v. Bd. of Educ. of Big Bay De Noc School Dist.* 283 N.W. 2d 775 (Mich., 1979).

22. *Phillippi v. School Dist. of Springfield Township*, 367 A. 2d 1133 (Pa., 1977). See also *Andresky v. Allegheny School Dist.*, 437 A. 2d 1075 (Pa., 1981).

23. *Funston v. Dist. School Bd.*, 278 P. 1075 (Ore., 1929).

24. *Ehret v. Kulpmont Borough School Dist.*, 5 A. 2d 188 at 191 (Pa., 1939).

25. 81 So. 2d 817 (La., 1955).

26. Wisconsin does not have a state board of education.

27. See K. D. Moran, "Governance," *The Yearbook of School Law*, 1979, ed. P. K. Peile (Topeka KS: NOLPE, 1979) 8-9.

28. See e.g., *in re Miller, 17 Educ. Dep't Report, N.Y. Comm'r Dec. No. 9600* (1978), and *Fair Lawn Educ. Ass'n v. Fair Lawn Bd. of Educ.* 401, A. 2d 681 (N.J., 1979), for a discussion of local interests versus state interests.

29. E.g., Ala., *Ala. Codes 16-24-8*; Conn., *Conn. Gen. Stat.* s10-151; Me., *Me. Rev. Stat. Ann.* s20-161 (5); Minn. *Minn. Stat.* s125.12(6A-GG); Neb., *Neb. Rev. Stat.* s79-1254; N.C., *N.C. Gen. Stat.* s115-142(e) (1) (1). See also, *King v. Berkeley Unified School Dist.*, 152, Cal. Rptr. , 782 (1979); *in re Fallick, 18 Educ. Dep't Report ———, N.Y. Comm'r Dec. No. 9979* (1979); *Shelton v. Lauderdale County Bd. of Educ.*, 380 So. 2d 835 (Ala., 1980).

30. *Weisman v. Bd. of Educ. of Jefferson City School Dist.*, 547 P. 2d 1267 (Colo., 1978).

31. Id.

32. *Hartman v. Merged Area VI Community College*, 270 N.W. 2d 822 (Iowa, 1978).

33. *Briggs v. Bd. of Directors of the Hinton Community School Dist.*, 282 N.W. 2d 740 (Iowa, 1979).

34. 377 F. Supp. 227 (Wis., 1974).

35. Id. at 239.

36. For a complete discussion of early retirement cost effectiveness and legal considerations see R. C. Wood, "The Early Retirement Concept and A Fiscal Assessment Model for Public School Districts," *Journal of Education Finance*, 7 (Winter, 1982) 262-276.

37. See e.g., 298 N.W. 2d 371; *Jordahl v. Indep. School Dist. No. 129*, 225 N.W. 2d 224 (Minn., 1974); and *Hendrickson v. Indep. School Dist. No. 319*, 228 N.W. 2d 126 (Minn., 1975).

38. Id., at 1103-04.

39. *Foesch*, 223 N.W. 2d 371; *Jordahl v. Indep. School Dist. No. 129*, 225 N.W. 2d 224 (Minn., 1974); and *Hendrickson v. Indep. School Dist. No. 319*, 228 N.W. 2d 126 (Minn., 1975).

40. *Minn. Stat. Ann.* s125.12; *N.Y. Educ. Law* s2588; *Cal Educ. Code* s444955.

41. *Dykeman v. Bd. of Educ. of the Dist. of Coleridge*, Eighth Dist. of Cedar City, Nebraska No. 6688.

42. See *Barnes v. Mendenhall*, 183 N.E. 556 (Ind., 1932); *Watson v. Burnett*, 23 N.E. 2d 420 (Ind., 1939). See also, *Rappold v. Bd. of Educ. Cleveland Hills Union Free School Dist.*, 447 N.Y.S. 2d 126 (N.Y., 1982).

43. 376 P. 2d 968 (N.M. 1962).

44. 252 A. 2d 427 (Me., 1969).

45. *Singleton v. Jackson Mun. School Dist.*, 419 F. 2d 1211 (5th Circuit, 1970), *cert. denied* 390 U.S. 1032 (5th Circuit, 1973).

46. Id., at 1218.

47. *Pickens v. Okolona Mun. Separate School Dist.*, 527 F. 2d 358 (5th Circuit, 1976).

48. Id.

49. *Lee v. Chambers County Bd. of Educ.*, 533 F. 2d 132 (5th Circuit, 1976).

50. 388 F. Supp. 738 (S.D. Texas, 1975), *reversed* 554 F. 2d 1353 (5th Circuit, 1977), *cert. denied*, 434 U.S. 966 (1977).

51. 544 F. 2d 804 (5th. Circuit, 1977).

52. 569 F. 2d 1383 (5th Circuit, 1978).

53. Fifth Circuit Court, No. 78-3757, December 18, 1980.

54. See e.g., California, *Supra* note 30.

55. See e.g., *Barnes*, 183 N.E. 556; *Seidel v. Bd. of Educ. of Ventnor City*, 168 A. 297 (N.J., 1933); *Flechtner v. Bd. of Educ.*, 174 A. 529 (N.M., 1955); *Watson*, 23 N.E. 2d 420; *Pickens Bd. of Educ. v. Keasler*, 82 So. 2d 197 (Ala., 1957); *Hankenson v. Bd. of Educ.*, 146 N.E. 2d 194 (Ill., 1957); *State ex. rel, Marolt v. Indep. School Dist. No. 695*, 217 N.W. 2d 212 (Minn., 1974); *contra*, *Garoway*, 424 A. 2d 297.

56. 287 P. 2d 73 (N.M., 1955).

57. *Fort Summer Mun. School Bd. v. Parsons*, 405 P. 2d 366 (N.M., 1971).

58. *Penasco Indep. School Dist. No. 4 v. Lucew*, 526 P. 2d 825 (N.M., 1974).

59. *Garowoy*, 424 A. 2d 297.

60. *Pennsylvania Labor Relations Bd. v. Greater Johnstown Area Vocational Technical School*, 410 A. 2d 1290.

61. *Board of Directors v. Teachers Ass'n* 392 a. 2d 1097 (Me., 1978).

62. 82 So. 2d 549 (Ala., 1959). See also *Paradis v. School Admin. Dist. 33 School Bd. No. 2967* (Maine Sup. Jud. Ct., 1982).

63. 119 A. 2d 43 (Pa., 1956).

64. See *Silver v. Bd. of Educ.*, 362 N.Y.S., 1975.

65. See *Karback v. Bd. of Educ.*, 114 Cal. Rptr. 84 (Ct. App., 1974).

66. *Higgins v. Bd. of Educ. of Community Unit School Dist. No. 303*, 428 N.E. 2d 1126 (Ill., 1981).

67. *Lezette v. Bd. of Educ.*, 319 N.E. 2d 189 (N.Y. 1974).

68. *Hill v. Dayton School Dist. No. 2*, 532 P. 2d 1154 (Wash., 1975).

69. 375 N.E. 2d 157 (Ill., 1978). See also *Dinersteein v. Bd. of Educ.*, 409 N.Y.S. 2d 22 (App. Div. 1978); and *Leonard v. Bd. of Educ.*, 373 N.E. 2d 477 (Ill. 1978).

70. See e.g., *Mroczek v. Bd. of Educ. of Beachwood City School Dist.*, 400 N.E. 2d 1362 (Ohio C.P., 1979); *Delagores v. Bd. of Educ. of the Town and City of West Haven*, 410 A. 2d 461 (Conn. Super. Ct. 1979); *Nagy v. Belle Vernon Area School Dist.*, 412 A. 2d 172 (Pa. Commonwealth Ct., 1980); *Krug v. Indep. School District No. 16*, 293 N.W. 2d N.W. 2d 26 (Minn., 1980); *Jenkintown School Dist.*, 441 A. 2d 816, (Pa., 1982).

71. *Lenard v. Bd. of Educ. of Fairfield School Dist.*, 384 N.E. 2d 1321 (Ill., 1979).

72. See e.g., *Johnson*, 377 F. Supp. 227; *Hill*, 119 A. 2d 43.

73. See e.g., *Brady v. Bd. of Trustees*, 242 N.W. 2d 616 (Neb., 1976); *Hill*, 119 A. 2d 43; *Schnabel v. Alcester School Dist. No. 61-i*, 295 N.W. 2d 340 (S.D., 1980).

74. See e.g., *Kramedas v. Bd. of Educ. of Christina School Dist.*, 523 F. Supp. 1268 (Del., 1981).

Appendix
Sample Contract Clause

Lay Off Clause

1. In the event of a reduction of teaching staff, the parties recognize the principle of seniority in the lay off or recall of staff within areas of certification and qualification.

2. For purposes of this section, the following definitions will apply:

a. "Certified" shall mean holding a current certificate in a subject matter area issued by _____

b. "Seniority" shall mean continuous service as a teacher commencing with the first day in the school district.

c. "Qualified" or "Qualifications" shall mean a teacher who is full certified in the subject matter category as defined herein, and who is currently teaching or has successfully taught such subject matter category with the past —— years in the school district. A teacher shall appear on each subject matter seniority list for which he/she is qualified as defined herein.

3. In the event of reduction in staff, teachers shall be laid off in inverse order of seniority within area of qualification.

4. In the event of recall of staff, teachers shall be recalled in order of seniority within area of qualification.

a. A teacher shall have the right to recall for a period of —— years from the last duty day in the school district.

b. If a position becomes available for a qualified teacher on lay off, the school district shall mail written notice to such teacher at the last address on file as provided by the teacher and contained in school district records, who shall have —— calendar days from the date of such notice to respond in writing accepting or declining the offer of recall and an additional —— calendar days to report for duty, if the teacher accepts recall. Failure to provide written notice of acceptance or re-employment, or to report with the time period provided herein, shall constitute forfeiture of the right to recall and the teacher's right to recall shall be terminated.

5. In the event of equal seniority, the order of lay off and recall shall be within the discretion of the school district.

6. A teacher on lay off pursuant to this section shall retain such amount of experience credit for pay purposes and leave accrual and other accrued benefits, if any which he or she had accrued at the time he or she went on leave for use upon recall. Additional experience credit for pay purposes or other benefits shall accrue for the period of time that an employee is on lay off under this section.

7. For purposes of seniority standing, a teacher's seniority date will be uneffected by lay off pursuant to this section, or any board approved leave pursuant to this Agreement.

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Adapted from the School District of River Falls, Wisconsin.

Sample Board Policy
Reduction in Professional Staff Work Force

I. Definition of Terms

A. Service. The period of time from the effective date or an educational staff member's signed employment contract, commencing the most recent term of continuing service in the ————————School District, including sabbatical leave(s) and authorized leave(s) of absence. If two or more employees have the same length of service, they shall be ranked by date of contract offer that begins the most recent period of continuous service and, if necessary, date of receipt of most recent application resulting in employment, and finally, by lot.

B. Endorsement Areas

1. Subject Area. The teaching endorsement on the educational staff member's ————————Certificate. Comprehensive endorsements will be divided into their constituent endorsements for the purposes of determining subject area, provided, however, that the individual endorsements comprising the history and social science endorsements will be aggregated into a single subject area indicated as history/social science. A list of subject areas is attached.

2. Grade Area. The teaching endorsement on the educational staff member's ————————Certificate relating to elementary education. Elementary teaching endorsements will be grouped as follows: Kindergarten (K), grades 1-6.

C. Classification Areas. The position title currently held by an administrator or supervisor in the district as well as other miscellaneous positions.

D. Active Assignments. The endorsement area(s) in which the teacher is actively teaching (or if not actively teaching, the most recent teaching assignment) at such time as it becomes necessary to implement the destaffing or reduction-in-force procedure.

E. Layoff. A condition creating certain recall rights, attendant to termination resulting from displacement through the operation of this procedure.

II. Destaffing

A. Teachers

1. Whenever the board determines that there is an excess teacher(s) in an endorsement area in a particular school or workplace for such reasons as reduction in school population or the closing of a facility, the teacher(s) with least service who is actively teaching in the endorsement area will be designated for destaffing by receiving a written notice to that effect. Consideration for transfer will be given to volunteers in the endorsement area in the affected school before this provision is implemented. Notice of transfer request status will be given to teachers concerned as soon as possible but no later than _____.

2. Teachers designated for destaffing will be ranked in order of service and by endorsement area. Said teachers will be assigned, in order of service, to available vacancies in their active assignments. If no vacancies are available in the teacher's active assignment, he or she will be assigned to an available vacancy in an endorsement area in which the teacher is certified. Said assignment will be made in order of service, provided, however, that assignment of vacancies outside the teacher's active assignment will not be made in circumstances where there are teachers to be destaffed in the endorsement area.

3. If a teacher refuses a position in an endorsement area in which he or she was actively teaching at the time of destaffing, the teacher will be terminated and will not be entitled to recall rights hereunder. If a teacher refuses an assignment outside

his or her active assignment, the teacher will be entitled to utilize the reduction-in-force procedure described below.

If no vacancies are available in a teacher's active assignment, and if the teacher is either ineligible for or elects not to accept vacancies outside his or her active assignment, said teacher will be entitled to exercise prerogatives set out in the reduction-in-force procedure.

B. Personnel in Classification and Miscellaneous Areas

1. Whenever the board determines that there is an excess number of persons in a classification area, including miscellaneous positions, at a particular facility for such reasons as reduction in school population or the closing of a facility, the person(s) in the classification area with least service at the facility will be designated for destaffing. Consideration for transfer will be given to volunteers in the classification area of the affected facility before this provision is implemented. Notice of transfer request status will be given to the persons concerned as soon as possible but no later than June 1.

2. Personnel designated for destaffing will be ranked in order of service and by classification area. Said personnel will be assigned, in order of service, to available vacancies in their classification area. If no vacancies are available in the person's classification, he or she will be entitled to utilize the reduction-in-force procedure hereunder.

3. If a person designated for destaffing refuses an available position in his or her classification area, said person will be terminated and will not be entitled to recall rights hereunder.

III. Reduction in Force

A. Whenever the board determines that there is an excess number of teachers in an endorsement area in the _____ school district, or when destaff teachers or school system personnel in classification areas are entitled to exercise reduction-in-force rights in the teacher endorsement areas, for such reasons as substantial reduction in student population or the closing of a facility, the following procedure will apply:

1. System-wide service lists prepared by endorsement area and based on length of service in this school district will be established, a copy shall be placed in each school. These lists will include all persons presently employed by the _____ (including persons on authorized leave of absence) who have service as educational staff members. Endorsements attained subsequent to the date the service lists are prepared will not be included on the said list until all persons in said list are recalled or forfeit recall rights.

2. Persons eligible for inclusion on the service lists described in subparagraph 1. will be ranked in order of service and may, in their order of service, displace the junior actively employed teachers in the displaced teachers' active assignments provided that the person exercising displacement rights has greater service than the teacher to be displaced. Where there is more than one person entitled to displacement rights in an endorsement area, said person will be assigned to an equivalent number of positions held by teachers with less service in the endorsement area.

This provision is not intended to permit a person with less service to displace an active teacher with more service. A person refusing assignment within said person's active assignment will be terminated and will not be entitled to recall rights hereunder.

3. In the event a person is not eligible to displace a teacher in his or her active assignment, the following procedure shall apply:

a. A master list of displaced personnel will be prepared in order of service. The list will include the endorsement areas of each person.

b. The person with the greatest service on the list will be assigned to the position held by the teacher with the least service in the displacing person's endorsement areas.

c. The procedure set out in subparagraph b. above will be followed subsequently for the remaining displaced personnel on the master list.

d. In no event will a person displace a teacher having greater service.

4. A person displaced from a teaching position by operation of this procedure will be eligible to displace teachers with less service in the displaced teacher's endorsement area.

5. A person who elects not to exercise displacement rights in his or her active assignment will be terminated.

6. A person who elects not to exercise displacement rights in his or her endorsement area (other than his or her active assignment) will be laid off.

B. The reduction-in-force procedure contained in subsection 3.a. above will apply to classification area positions with the following modifications:

1. Personnel who are eligible for displacement prerogatives by operation of the destaffing procedure or by virtue of having been designated as excess will be entitled to displace the junior person in their classification area providing the displacing person has more service than the person to be displaced.

2. If a person within a classification area lacks sufficient service to displace another person within his or her classification area, that person may exercise reduction-in-force prerogatives in the teacher classification as set forth in subsection 3.a. . For purposes of exercising displacement rights within a teacher's endorsement area, the classification area employee's active assignment will be deemed to be the endorsement area in which the employee most recently taught prior to assuming a classification are a position.

3. A person may only exercise displacement prerogatives with the classification area in which he or she is employed at the time he or she becomes eligible to exercise such rights, provided that intermediate and high school principals will be deemed eligible to displace intermediate and high school assistant principals according to the procedure set out in subsection III.A., and elementary school principals will be entitled to displace elementary school principals; except as provided above, a person's displacement prerogatives are limited to his or her classification area, and thereafter, to the teaching endorsement area.

4. Classification area personnel who elect not to exercise displacement rights within their classification area shall be terminated and will not be entitled to recall rights hereunder. Classification area personnel who elect not to exercise displace-

ment prerogatives in teacher endorsement areas and principals who elect not to displace assistant principals will be laid off and will be entitled to recall rights hereunder.

IV. Layoff and Recall

A. Educational staff members on layoff are terminated; however, upon recall, they will receive all previously accumulated service credit.

B. Teachers laid off as a result of this policy shall be ranked in order of service and by endorsement. When openings occur, the teacher on layoff with the greatest service in the endorsement area will be entitled to the position. If the opening is in the teacher's active assignment, the teacher must take the opening or lose all recall rights under this provision. If the opening is in the teacher's endorsement area but not in his or her active assignment, the teacher may elect whether or not to take the opening. If the teacher elects not to take the opening, his or her name will be struck from the recall list in that endorsement area, but he or she who retain recall rights in his or her other endorsement areas. Teachers who remain on layoff for up to three (3) years from date of layoff will enjoy no further right of recall.

C. Classification area personnel who are laid off as a result of this policy will be ranked in order of service and by classification area. Classification area personnel who exercise displacement rights in teaching endorsement areas, and principals who exercise displacement rights in the assistant principal classification area, will be eligible for recall on the same basis as classification area personnel who are laid off. For purposes of this provision, said persons will be deemed to be "persons on layoff status." When openings occur, the person of layoff status with the greatest service in the endorsement area will be entitled to the position. If the person elects not to accept the opening, he or she will forfeit entitlement of recall under this procedure.

D. When an educational staff member is to be recalled, he or she will be notified by registered mail (return receipt requested) at his or her last known address on record with the board.

If an education staff member so notified of recall does not accept in writing the offer of re-employment within ten (10) work days of receipt of notice, all right of recall under this provision will be forfeited. If the notice of recall is undeliverable, the educational staff member will forfeit the recall rights of this provision.

V. Part Time Teaching Positions

As an alternative to layoff an educational staff member may elect to accept an available part-time teaching or teacher aide position in the _____ school district. For the purposes of this provision, an available part-time teacher or teacher aide position is defined as an opening created by the termination of an incumbent part-time teacher or teacher aide or the expansion of the available part-time teacher or teacher positions. Educational staff members eligible and certified for said positions will be notified by the Board and will be offered available positions in their order of service. An educational staff member electing to accept a position as a part-time teacher will retain the recall rights set out above. An educa-

tional staff member foregoing such alternative employment will retain his or her recall rights.

VI. Miscellaneous

Notwithstanding any other provisions of this policy dealing with displacement, educational staff members whose services are necessary to insure efficient operation may be retained irrespective of length service and will not be subject to displacement provided they are within the following assignments, limited to one individual for each activity in a school and provided the incumbents presently have and are to be reassigned the same responsibilities the following year:

High school and secondary school sponsors and coaches who fall under Categories I and II of the salary supplements regulation, the band director, the choral director, and the chairperson of the major departments, intermediate school newspaper, yearbook and SCA sponsors, and chairperson of the major departments.

A maximum of _____ educational staff members in addition to the above may be detained irrespective of length of service and will not be subjected to displacement if they are necessary to maintain program demands.

During a period of reduction-in-force, the Board shall limit the hiring of educational staff members to those positions that cannot be filled by qualified current educational staff members, including those returning from leaves of absence, as well as those employees being considered for reduction-in-force; provided, however, this provision will not operate to permit an educational staff member to claim a vacancy in a higher classification.

VII. Notice

Appropriate, certified employee organizations shall be notified in writing at least 30 days in advance of any pending layoff.

Adapted from Fairfax County School Board, Fairfax, Virginia.